# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CRIMINAL APPLICATION No. 1131 of 2007

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE M.R. SHAH**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MAGANBHAI BHEMABHAI RAVAL - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 1 - Respondent(s)**

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**Appearance :**
HL PATEL ADVOCATES for Applicant(s) : 1,
MR KODEKAR, ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**

**Date : 09/07/2007**

**ORAL JUDGMENT**

Rule. Shri RC Kodekar, learned APP waives service of

rule on behalf of the respondent State.

2. Present Special Criminal Application under Article 226 of the Constitution of India read with section 482 of Criminal Procedure Code has been filed by the petitioner, - informant of FIR being C.R. No.83 of 2007 registered with Ditvas Police Station (subsequently transferred to Shehra Police Station) to transfer the investigation of the said complaint to the CID Crime or to the officer not below the rank of Deputy Superintendent of Police.

3. The facts in nutshell as per the complaint are as under:

The son of the petitioner Jagdish went to attend the marriage of the cousin of his wife with his in-laws on 11-5-2007. Jagdinsh and his in-laws went with the bride-groom to vilalge Undara on 12-5-2007 and Jagdish died on 12-5-07 under mysterious circumstances. The petitioner gave information about the unnatural death of his son while he was with his in-laws on 13-5-2007. As per the petitioner,the police did not register the information as FIR and the petitioner therefore, made complaint to the DSP,

Lunawada about non registration of the FIR. That thereafter, the FIR was registered by Ditwas Police Station on 15-5-2007, which was subsequently transferred to Shehra Police Station. It is the case of the petitioners that the Investigating Officer of Shehra Police Station has not investigated the complaint in a fair manner and in right direction and they have tried to convert unnatural death into death by heart attack.

4. The learned advocate appearing on behalf of the petitioner has submitted the following grounds and the circumstances to transfer the investigation from Shehra Police Station to CID crime.

1. initial report/post mortem chit revealed that the death was the result of strangulation/ throttling.
2. The photograph of the deceased shows that blood on the face and prima facie a case of unnatural death.
3. The post mortem report dated 15-5-2007 of Santrampur Civil Hospital indicates the following defects and discrepancies:
    i. It does not bear outward number

ii. Column 8 mentions Blood stained clothes

iii. Column 17 does not mention any external injury. However, column 18 mentions remark “Anti Mortem”. This leads to an inference that the PM report has been manipulated.

iv. The final cause of death is “Congestive Cardiac Failure” Due to cardiac arrest due to myocardial infection.

v. The viscera was not taken which would have perhaps revealed the real cause of the death.

The learned advocate appearing on behalf of the petitioner has also pointed out other circumstantial evidence which are as under:

1. The previous FIR 128/05 registered against the in-laws of the deceased for beating the deceased.
2. The deceased was lastly seen alive with his in-laws on 12-5-07.
3. The incident appears to have occurred at village Udara where the deceased went with his in-laws. The sisters of the deceased reside in village

Udara. However, the accused did not inform the sisters about whatever happened to the deceased.

4. The petitioner was not informed about the death immediately. The petitioner was informed about the death after one day through somebody after managing everything with the police.

5. The deceased was less educated and unemployed, whereas his wife is educated and doing a job of a primary teacher. She had an affair with one teacher and therefore, she wanted to do away with her husband (deceased) (motive of the crime).

Therefore, considering the above, it is submitted that the investigation by the police officer of Shehra Police Station is not in a fair manner and in right direction and they have tried to cover up everything and therefore, it is requested to transfer the investigation from the Shehra Police Station to CID crimes.

5. Shri Kodekar, ld. APP has produced the investigation papers before this Court. He has submitted that the initial

report/post mortem chit mentions that the death was the result of Asphyxia/throttling, was the prima facie opinion of the Doctor of Santrampur Civil Hospital and the same was without consulting the other doctors and after consulting the other doctors, it was found that the deceased died due to heart attack and therefore, the final post mortem report has been submitted. It is also further submitted by Shri Kodekar that even the said post mortem report submitted by the doctor of Santrampur Civil Hospital was subsequently sent to the SSG Hospital, Vadodara and even the doctors of SSG Hospital also have agreed with the opinion and the final PM report of the Santrampur Civil Hospital. He has also further submitted that investigation has been carried out and the statements have been recorded. Therefore, it is submitted that the investigation has been carried out in a fair manner and in right direction. When a pointed question was asked to the ld. APP to explain the injuries found on the face of the deceased and to point out whether the said things have been considered by the Investigating Officer or not, the ld. APP is not in a position to satisfy the Court. It is also required to be noted that in column No.17 in the PM report

of the Santrampur Civil Hospital upon which the reliance has been placed by the Investigating Officer, it does not mention any external injuries though, even in the inquest panchnama, such injuries have been mentioned. It is also to be noted that in column No.8 in the PM report it also mentions blood stains clothes. If the injuries were found and in the column No.17 there is no mention about any external injuries and even the initial report/PM chit mentions that the death was the result of the Asphyxia/throttling, it prima facie appears to the Court that the PM report has been manipulated. Even, this Court has also seen the PM report of the deceased, which clearly shows the blood on the face and prima faice the case of unnatural death. It appears to the Court that the Investigating Officer has simply relied upon the above suspected PM report and is of the opinion that the deceased died due to heart attack. It appears that the Investigating Officer has not investigated the case considering the injury even as mentioned in the inquest panchnama. Considering the above, it prima facie appears to the Court that the investigation by the Investigating Officer of Shehra Police Station is not in a fair manner and

in its right direction. Under the circumstances, the investigation from the Shehra Police Station is required to be transferred to other independent agency to found out the real truth and the offenders. This Court is not further observing any other things on merits as it may affect and/or prejudice the further investigation. Suffice it to observe that the investigation by Shehra Police Station is not in its right direction with a view to find out the real culprit and the cause of death.

6. For the reasons stated above, the petition is allowed and the investigation being C.R. No.83 of 2007 registered with Ditvas Police Station, subsequently transferred to Shehra Police Station is transferred to CID crime. The CID crime is directed to further investigate the case and the aforesaid complaint considering the above things and on other things to find out the real culprit and the offenders. The investigation to be initiated immediately and to be completed as early as possible. Rule made absolute.

(M.R. Shah, J.)

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